

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TIMOTHY CYRUS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:11-cv-234

Barrett, J.

Bowman, M.J.

MEMORANDUM ORDER

On April 19, 2011, Plaintiff, through counsel, tendered a complaint in this court seeking to appeal a decision of the Commissioner of Social Security under the Social Security Act. Plaintiff's motion to proceed *in forma pauperis* was granted on May 5, 2011. On July 25, 2011, the Commissioner filed and served its answer and what was represented to be a certified copy of the administrative record, including the transcript of the hearing held before the administrative law judge. On December 6, 2011, noting that Plaintiff had failed to file his "Statement of Errors" within forty-five (45) days of service of the answer and administrative record as required by the General Order of this Court, the undersigned directed Plaintiff to "show cause" for his failure to do so.

On December 19, 2011, Plaintiff filed a response, together with a motion to remand (Doc. 11), that pointed out that the certified copy of the administrative record filed by the Commissioner in July 2011 contained records pertaining to a different social security claimant by the name of Vincent H. Dozier. As this Court noted in its last order, Plaintiff's explanation was "silent as to the reason for his failure to bring the administrative error to

the Commissioner's or the Court's attention at an earlier date." (Doc. 12). Nevertheless, given the obvious error by the Commissioner, the Court held that Plaintiff had satisfied the "show cause" order. On January 11, 2012, the Commissioner corrected its administrative error by withdrawing the previous administrative record, and filing a second (corrected) certified administrative record. In light of the length of the delay in this case to date that is partially attributable to both parties, **IT IS ORDERED:**

1. Plaintiff shall file his Statement of Errors on or before **February 21, 2012**;
2. Defendant shall file and serve any "Memorandum in Opposition" to Plaintiff's statement of errors on or before **March 9, 2012**;
3. Plaintiff may file and serve any reply memorandum within ten (10) days of service of the Commissioner's Memorandum in Opposition;
4. Plaintiff's motion to remand (Doc. 11) is **DENIED AS MOOT**.

s/ Stephanie K. Bowman

Stephanie K. Bowman
United States Magistrate Judge